the intention that after his death it shall be possessed by the grantee; and those in which the deed is deposited with a person other than the grantee, to be delivered to the grantee after the grantor's death. BREWSTER, CONVEYANCING, §305. In the former class of cases there is no delivery because the grantor has not surrendered control of the deed, and therefore the deed is void. *Stone* v. *French,* 37 Kan. 145, 14 Pac. 530, 1 Am. St. Rep. 237; *Parrott* v. *Avery,* 159 Mass. 594, 35 N. E. 94, 38 Am. St. Rep. 465. But in the latter class of cases if the grantor reserves no control over the deed during his lifetime, then there is a valid conveyance, and the delivery relates back to the time when the grantor surrendered control over it to the depositary. *Brown* v. *Westerfield,* 47 Neb. 399, 53 Am. St. Rep. 532, 66 N. W. 439; *Fulton* v. *Priddy,* 123 Mich. 298, 81 Am. St. Rep. 201, 82 N. W. 65. In the principal case it was found that the grantor had surrendered control of the deed and it operated at once.

DEEDS—CONDITION OR COVENANT.—Land was conveyed to the plaintiff Board of Education by B., the habendum reading, " to have and to hold the same unto the said second party, their successors in office forever, to be used only for school purposes," and plaintiff paid full value therefor. Plaintiff ceased to use the premises for school purposes and proposed to sell to defendant. An agreed action was started to determine whether plaintiff could convey a good title. *Held* that the words, "to be used for school purposes" were descriptive merely; a covenant and not a condition. *Wright and Taylor, Inc.* v. *Board of Education of Bullitt Co.,* (Ky. 1913) 152 S. W. 543.

Whether certain words used in a deed amount to a condition or a covenant is a matter of construction, and the intention of the parties will control. *City of St. Louis* v. *Ferry Co.,* 88 Mo. 615; *Post* v. *Weil,* 115 N. Y. 361. Such words as "on the express understanding," "provided always," "provided," "upon express condition that," "subject to the condition that," are not alone sufficient to show an intent to insert a condition subsequent, and clauses introduced by such words are frequently regarded as covenants only. *Anthony* v. *Stephens,* 46 Ga. 241; *Countryman* v. *Deck,* 13 Abb. N. C. (N. Y.) 110; *Woodruff* v. *Woodruff,* 44 N. J. Eq. 349; *Post* v. *Weil,* 115 N. Y. 361; *Skinner* v. *Shepard,* 130 Mass. 180. Where the intention of the parties is doubtful, the court will construe a restriction in a deed as a covenant rather than as a condition. *Lowman* v. *Crawford,* 99 Va. 688. Where a right of re-entry is reserved along with the restriction, a sufficient intent is held to be shown to construe as a condition. *Woodruff* v. *Power Co.,* 10 N. J. Eq. 489; *Minard* v. *D. L & W. R. Co.,* 139 Fed. 60; *Brown* v. *Tilley,* 25 R. I. 579. And such clause of re-entry is often held to be necessary in order to construe a restriction as a condition rather than as a covenant. *Star Brewery Co.* v. *Primas,* 163 Ill. 652; *Village of Ashland* v. *Greiner,* 58 Oh. St. 67; *Church* v. *Church,* 114 N. Y. S. 623.

DIVORCE—EXTRATERRITORIAL EFFECT OF PROHIBITION OF REMARRIAGE.—A petition by an administrator to sell land for the payment of debts was opposed by the defendant, who claimed homesead and dower rights in the land as

husband of the deceased. He had previously obtained a divorce from his first wife, and the decree forbade both parties to remarry within a year; but within the prescribed time, defendant and deceased, both of them being residents of Illinois, went to Missouri and were married. They then returned to Illinois, and made their home on the land in question. The Illinois Statute declared remarriage within the year to be "absolutely void," and punishable by imprisonment. *Held,* The Missouri marriage was absolutely void, and therefore the defendant can claim no marital rights in the lands of the deceased: *Wilson* v. *Cook* (Ill. 1912) 100 N. E. 222.

Each state has the right to control the validity of marriages contracted abroad between its own citizens; but such right is legislative and not judicial. 1 BISHOP, MARRIAGE, DIVORCE & SEPARATION, § 873. In the absence of statute the general rule is that the *lex loci contractus* controls the validity of a marriage; hence the point under consideration becomes largely a question of statutory construction. A mere prohibition on the guilty party for a prescribed period is usually considered penal, and will not be given extraterritorial effect. *State* v. *Richardson,* 72 Vt. 49, 47 Atl. 103: *Ex parte Crane,* (Mich. 1912) 136 N. W. 587. Some statutes provide that both parties shall be *incapable* of contracting marriage within a year, and that marriages in violation thereof, whether celebrated within or without the state, shall be void; and these are always given extraterritorial effect when the parties are domiciled within the state. *McLennan* v. *McLennan,* 31 Ore. 480, 50 Pac. 802, 38 L. R. A. 863, 65 Am. St. Rep. 835; *State* v. *Fenn,* 47 Wash. 561, 92 Pac. 417; *Pierce* v. *Pierce,* 58 Wash. 662, 109 Pac. 45. The authorities are in conflict when the statute is similar to the one involved in the principal case, that is, containing a general declaration of nullity but not expressly applying it to foreign marriages. As *contra* to the principal case, see *In re Wood's Estate,* 137 Cal. 129, 69 Pac. 900; *Van Voorhis* v. *Brintnall,* 86 N. Y. 18, 40 Am. Rep. 505. See in accord, *Lanham* v. *Lanham,* 136 Wis. 360, 117 N. W. 787, 17 L. R. A. N. S. 804, 128 Am. St. Rep. 1085. The desirability of such a rule is primarily a question for the legislature and not for the courts; but, says Mr. BISHOP, "such legislation, if ever judicious, should be exercised with extreme caution." 1 BISHOP, MARRIAGE, DIVORCE & SEPARATION, § 885. On the general question of the effect of the *lex domicilii* and the *lex loci contractus,* see 11 MICH. LAW REV. 333.

EASEMENTS—WAY OF NECESSITY.—Plaintiff and defendant owned adjoining tracts of land; defendant's tract abutted on a public roadway and was situated between the roadway and the plaintiff's land. Plaintiff purchased his tract from one Rogers about eight years before the suit. During those eight years plaintiff had permissive use of a way across the defendant's land through a gateway opening on to the highway. Defendant obstructed the way by locking the gate. Plaintiff brought suit for obstruction of the way on the ground that it was a way of necessity. *Held,* there cannot be a way of necessity unless the claimant would be wholly deprived of the use of his land, and because it also appeared that plaintiff had not purchased his land from the defendant. *Williams* v. *Kuykendall* (Texas 1912) 151 S. W. 629.